80395-1

No. 80395-1

SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF ARLINGTON, DWAYNE LANE and SNOHOMISH COUNTY,

Appellants,

v.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD, STATE OF WASHINGTON; 1000 FRIENDS OF WASHINGTON nka FUTUREWISE; STILLAGUAMISH FLOOD CONTROL DISTRICT; PILCHUCK AUDUBON SOCIETY; THE DIRECTOR OF THE STATE OF WASHINGTON DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT; and AGRICULTURE FOR TOMORROW,

Respondents

SNOHOMISH COUNTY'S RESPONSE TO PETITIONS FOR REVIEW BY THE SUPREME COURT

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I. INTRODUCTION

Having lost on all issues in a 26-page reported decision by a unanimous Court of Appeals,[1] the three Respondents[2] below have petitioned this Court seeking review of that decision. Respondents' Petitions for Review fail to demonstrate that they have met any of the grounds in RAP 13.4(b) for this Court to accept review. Snohomish County, one of the Petitioners before the Court of Appeals, requests this Court to deny the Petitions for Review.

In the last two years, this Court has issued two landmark decisions[3] on the two key issues in this appeal: (1) the appropriate level of deference that growth management hearings boards (growth boards) are to afford local jurisdictions under the Growth Management Act (GMA), and (2) the proper test for designating agricultural lands under the GMA. The two Central Puget Sound Growth Management Hearings Board (Board) decisions on review in this case were issued in 2004, before this Court's decisions in Quadrant and Lewis County. In reviewing the Board's decisions, the Court

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[1] City of Arlington v. CPSGMHB, 138 Wn.App. 1, 154 P.3d 936 (2007). References to the Court of Appeals decision herein will be to the Slip Opinion ("Slip Op.").

[2] The County will refer to the "petitioners" herein jointly as "Respondents" as they were denominated below. The three Respondents will be referred to as "CTED" (State Department of Community Trade and Economic Development), "District" (Stillaguamish Flood Control District), and "Futurewise" (Futurewise, Agriculture for Tomorrow and Pilchuck Audubon Society).

[3] Quadrant Corporation v. Central Puget Sound Growth Management Hearings Board, 154 Wn.2d 224, 110 P.3d 1132 (2005) (Quadrant), and Lewis County v. Western Washington Growth Management Hearings Board, 157 Wn.2d 488, 139 P.3d 1096 (2006) (Lewis County).

of Appeals in this case applied the proper standard of review under Quadrant and the correct test for designating agricultural lands under Lewis County. In contrast, the Board's decisions failed to afford the proper level of deference to Snohomish County's decision, and failed to evaluate properly whether the land met the GMA definition of "agricultural lands."

The Respondents here tacitly request that this Court turn back the clock to pre-1997, overrule Quadrant and Lewis County, and impose a "preponderance of the evidence" standard of review, allowing the Board to weigh the evidence that was in the record before the County and then decide the case independently of the County's decision, based on its own review. That has not been the law since the Legislature amended the GMA in 1997 to (1) change the standard of review to "clearly erroneous,"[4] and (2) require the growth boards to give deference to local governments in how they plan for growth.[5] This Court should firmly reject Respondents' request.

The Respondents have failed to meet any of the grounds in RAP 13.4(b) warranting review by this Court. As the County will explain below, the Court of Appeals decision was not at odds with established case law, nor does it present a matter of substantial public interest. This Court should

[4] RCW 36.70A.320(3).
[5] RCW 36.70A.3201.

uphold the Court of Appeals's well-reasoned opinion by denying Respondents' Petitions for Review.[6]

II. ARGUMENT

A. The Quadrant Decision Recognized that the GMA Affords Enhanced Deference to Local Decisions.

Prior to 1997, the GMA imposed a "preponderance of the evidence" standard of review for the growth boards in reviewing county and city land use decisions under the GMA. See former RCW 36.70A.320(3), Laws of 1991, 1st sp. Sess., Ch. 32, Sec. 13. In 1997, the Legislature amended RCW 36.70A.320(3),[7] changing the review standard to "clearly erroneous" and thereby establishing a higher burden for anyone challenging a local land use decision before a growth board. At the same time, the 1997 Legislature adopted RCW 36.70A.3201,[8] which clarified that the Legislature's intent, in amending RCW 36.70A.320(3), was:

> that the boards apply a more deferential standard of review to actions of counties and cities than the preponderance of the evidence standard provided for under existing law. In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter.

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[6] The City of Arlington and Dwayne Lane, Co-Appellants with the County below, will respond to Respondents' arguments regarding the inclusion of the land in Arlington's urban growth area (CTED Petition at 15-20; Futurewise Petition at 17-20).

[7] Laws of 1997, Ch. 429, Sec. 20.

[8] Laws of 1997, Ch. 429, Sec. 2.

Neither RCW 36.70A.320(3) nor .3201 has been amended since 1997.

In May 2005, this Court decided the Quadrant case. In the Court's decision reversing in part a Board ruling, it recognized that one ramification of the 1997 amendments to the GMA was to change to whom reviewing courts gave deference:

> In the face of this clear legislative directive, we now hold that deference to county planning actions, that are consistent with the goals and requirements of the GMA, supersedes deference granted by the APA and courts to administrative bodies in general. (footnote 7) . . . [A] board's ruling that fails to apply this "more deferential standard of review" to a county's action is not entitled to deference from this court.

154 Wn.2d at 238 (emphasis added). By using the words "we now hold," this Court clarified in Quadrant that it was announcing that the 1997 amendments imposed a new judicial standard of review: reviewing courts will not defer to growth board decisions that fail to afford local land use decisions the deference they are entitled under RCW 36.70A.3201 and 36.70A.320(3).

The importance of this ruling is directly applicable to review of growth board decisions by courts. Under the Administrative Procedures Act (APA), RCW 34.05.570(3)(d) provides that one of the nine grounds for granting relief is if the agency's decision "erroneously interpreted or applied the law." Part and parcel of a review of a growth board decision under that standard is whether the growth board "erroneously interpreted or applied"

RCW 36.70A.320(3) and .3201 in its review of the county land use decision. Where a growth board fails to grant the deferential review required by those GMA provisions, its decision erroneously applies the law, and therefore must be reversed under RCW 34.05.570(3)(d).

This Court analyzed that "standard of review" issue with respect to agricultural lands in the Lewis County decision.

B. In Lewis County, This Court Recognized that Counties Are To Be Afforded Deference in Designating Agricultural Lands Under the GMA.

This Court has long recognized that to qualify as "agricultural lands" under RCW 36.70A.030(2), the land in question must meet a two-part test. It must be (1) "primarily devoted to" the commercial production of agricultural products, and (2) have "long-term commercial significance for agricultural production."[9] In City of Redmond v. Central Puget Sound Growth Management Hearings Board, 136 Wn.2d 38, 959 P.2d 1091 (1998) (Redmond I), this Court recognized that although the "primarily devoted to" test is area-wide in scope,[10] the "long-term commercial significance" prong involves an individualized evaluation of whether "the land in question"[11] meets that test. In Redmond I, this Court said that the DCTED criteria in WAC 365-190-050(1) provide "ready guidance"[12] to assist local

[9] "Long-term commercial significance" is itself defined in RCW 36.70A.030(10).
[10] 136 Wn.2d at 52-53.
[11] Id. at 54.
[12] Id. at 55.

governments in evaluating the last two factors in the definition of "long-term commercial significance" in RCW 36.70A.030(10): "...[t]he land's proximity to population areas, and the possibility of more intense uses of the land."

In Lewis County, this Court reiterated what the definition of "agricultural lands" in RCW 36.70A.030(2) says on its face: that for lands to qualify as "agricultural lands" under the GMA they must meet both prongs of the test. They must be "primarily devoted to" the production of agricultural products and have "long-term commercial significance" for agricultural production.[13] In analyzing whether land has long-term commercial significance for agricultural production, counties "must consider development prospects (the 'possibility of more intense uses') in determining if land has the enduring commercial quality needed to fit the agricultural land definition."[14] This Court explicitly held that when making that long-term commercial significance analysis, counties may consider the ten criteria in WAC 365-190-050(1).[15]

In Lewis County, this Court found that in establishing its agricultural lands designation criteria and designating 54,500 acres as agricultural resource lands, Lewis County's consideration of the needs of the farming industry "above all else" in evaluating the long-term commercial

[13] 157 Wn.2d at 499-500.
[14] Id. at 501.
[15] Id. at 502.

significance prong of the test for agricultural land was within its discretion under RCW 36.70A.3201[16] and not clearly erroneous under RCW 36.70A.320(3). This was so even though industry needs is not one of the factors in WAC 365-190-050(1).

C. Relating to the County's Decision that the Island Crossing Land No Longer Had Long-Term Commercial Significance for Agricultural Production, The Court of Appeals Decision Properly Found that the Board Misapplied the Law and that Its Decision Was Not Supported By Substantial Evidence.

Although CTED argues that the Court of Appeals applied the incorrect standard of review, it has failed to prove that claim. More importantly for the purposes of this Court's consideration of the petitions for review, the Respondents failed to demonstrate that the Court's decision conflicts with decisions from this Court warranting review under RAP 13.4(b)(1). To the contrary, the Court of Appeals followed Redmond I, Quadrant and Lewis County in its analysis and decision.

1. The Board Misapplied the Law.

The Board found that the County's decision to remove the Island Crossing land from an agricultural resource designation was clearly erroneous. The Court reversed the Board, finding that the Board erroneously interpreted and applied the law (RCW 34.05.570(3)(d)). The Court stated:

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[16] Id. at 495, 503.

> We find the Board erred in concluding the County committed clear error in determining the land in question has no long-term commercial significance for agricultural production. There is evidence in the record supporting the County's determination on this point, and the Board wrongly dismissed this evidence. Because this evidence supports the County's finding that the land at Island Crossing has no long-term commercial significance for agricultural production, the Board erred in not deferring to the County's decision to redesignate the land for urban commercial use.

Slip Op. at 11 (emphasis added). The highlighted language above demonstrates that the Court followed Quadrant by reversing the Board for failing to defer to the County's land use decision, which was not clearly erroneous in light of the record as a whole.

The Court traced the evidence in the record, principally through the Higa-Burkholder report analyzing the factors in WAC 365-190-050(1), concluding that the land did not have long-term commercial significance for agricultural production. The Court ruled that that report supported the County's decision.[17] The Court noted that although there was other evidence in the record offering a different conclusion in analyzing the WAC factors, the Board erred by not deferring to the County's decision.[18] The Court found that the Board misinterpreted and misapplied the Redmond I decision by dismissing and not considering the Higa-Burkholder report simply because it had been prepared by the property owner's consultant.[19]

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[17] Slip Op. at 14-16.
[18] Id. at 17.
[19] Id. at 16-17.

Thus, the Court ruled that the Board had misapplied the law in finding the County's decision to remove the land from an agricultural designation to be noncompliant with the GMA. The Board erroneously applied the law in its failure to defer to the County's decision, and the Court properly reversed it under RCW 34.05.570(3)(d). The Court of Appeals squarely followed this Court's directive in Quadrant and Lewis County in its ruling.[20]

2. The Board's Decision Was Not Supported By Substantial Evidence.

The Court of Appeals additionally reversed the Board under RCW 34.05.570(3)(e) because the Board's decision was not supported by substantial evidence; the Board erroneously disregarded evidence in the record supporting the County's decision, to which the Board was obligated to defer under Quadrant and Lewis County.

CTED argues that the Board's decision should have been upheld because "it found the evidence that supported continued agricultural designation clearly outweighed the evidence relied upon by the County."[21] However, under RCW 36.70A.320(3), the Board's review of the County's decision is not based on whether evidence on one side of an issue

[20] If anything, this case merits deferring to the County's choice even more than in Lewis County, since here the County based its decision specifically on the analysis of the CTED factors in WAC 365-190-050(1), rather than on a non-CTED factor basis (the needs of the agricultural industry) as Lewis County had done in that case.
[21] CTED Petition at 9-10 (footnotes omitted).

"outweighed" evidence on the other. CTED's argument erroneously urges this Court to apply the "preponderance of the evidence" review standard that the Legislature repealed in 1997.[22] The correct standard is "clearly erroneous."[23]

Next, CTED claims that the Court of Appeals "inaccurately characterized the Board as having 'dismiss[ed]' evidence that supported the County's position."[24] However, the record supports the Court's characterization. The word "dismiss" means "to refuse to accept or recognize; reject."[25] Although the Board acknowledged the existence of the Higa-Burkholder report, it refused to accept it because it was prepared by Dwayne Lane's consultant:

> To the extent that the County and Intervenor (Lane) rely on the materials prepared by the consulting firm of Higa-Burkholder, the Board notes that this information was prepared at the behest of Mr. Dwayne Lane, prime sponsor of the "Dwayne Lane Proposal for 2003 Final Docket Amendments." Mr. Lane is one of the property owners in the Island Crossing area and therefore has specific interests and intentions relative to the land use of his property. Therefore, the Board construes any record declaration or conclusions entered by Mr. Lane's consultants to be reflections, if not direct expressions, of "landowner intent" and assigns them the appropriate weight (i.e. expressions of landowner intent, alone, are not determinative.)[26]

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[22] See Section II.A above.
[23] RCW 36.70A.320(3).
[24] CTED Petition at 10.
[25] American Heritage Dictionary of the English Language (4th Ed. 2006).
[26] CP Vol. XIII, pp. 2589-90 (emphasis added).

The Board's decision quotes verbatim the PDS analysis of the ten factors in WAC 365-190-050(1).[27] However, unlike the Court of Appeals decision, the Board's decision fails to analyze or even discuss the Higa-Burkholder report's analysis of the same factors.[28] It is clear from that fact that the "appropriate weight" the Board assigned to the report was no weight at all. That fact alone proves that the Board "dismissed" that report.[29]

More importantly, the Board completely discounted the County Council's findings on the issue of long-term commercial significance because they were based in large part on that report. As the County explained at length,[30] its analysis of the WAC factors, based in large part on the Higa-Burkholder report, was more credible than that in the EIS prepared by the Planning and Development Services Department (PDS).[31] The Board's conclusion that the County's decision was supported only by "scant" [32] evidence in the record demonstrates the Board's utter refusal to defer to the County's decision. The Court found that the Board's dismissal of the Higa-Burkholder report as merely a reflection of landowner intent was a misapplication of this Court's Redmond I decision warranting

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[27] CP Vol. XIII, pp. 2580-82.
[28] Id. at 2589-90. The Board's decision following the compliance hearing addresses the WAC factors only in a footnote and again ignores the Higa-Burkholder report. CP Sub #24 at 2902, footnote 6.
[29] None of the Respondents has pointed to any legal authority authorizing a growth board to dismiss evidence simply because of its source.
[30] Brief of Appellant Snohomish County at 21-35, and Appendix A thereto.
[31] The "EIS" and the "PDS report" are one and the same document. CP 2183. The Board's decision and the Court's opinion are unclear on that point. Slip Op. at 12.
[32] CTED Petition, p. 10, footnote 11.

reversal.[33] The Board's refusal to pay any attention to it supported the Court's conclusion that the Board "dismissed a key piece of evidence that supported the County's conclusion"[34] on the issue of long-term commercial significance.

The Board also dismissed the testimony of the prior property owner, Roberta Winter, as "anecdotal," and too removed in time to be credible.[35] To the contrary, sworn testimony from a prior owner of the subject property, related to the issue of whether that land could be profitably farmed, was directly relevant to the issue of whether that particular property had long term commercial significance for agricultural production. It was not "anecdotal."

The District[36] accuses the Court of Appeals of erroneously deferring to a County decision in this case that has only a "scintilla" of evidence in the record supporting it. CTED similarly charges the Court with imposing a lax standard of review that upholds a County decision "if the County can cite to any evidence in the record that supports its action."[37] Respondents mischaracterize the Court's decision and the record. Like the Board, they dismiss the substantial evidence in the record, supplied by the Higa-Burkholder report and the Winters testimony, that supported the County's

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[33] Slip Op. at 16-17.
[34] Id. at 26.
[35] CP Vol. XIII, p. 2589.
[36] District's Petition for Review at 15.
[37] CTED's Petition for Review at 12 (emphasis added).

decision. Like the Board, CTED and the District ignore any evidence that supports an outcome different from that which they want to reach. Neither CTED nor Futurewise addresses either the County's comparison or the Court's analysis of the Higa-Burkholder report and the EIS discussion of the WAC factors. They both simply accept, in knee-jerk fashion, that the EIS is "right" and the Higa-Burkholder report is "wrong."

Ironically, CTED accuses the Court of Appeals of substituting itself for the Board,[38] when in fact it is the Board that erroneously substituted itself for the County, weighing the evidence, evaluating the credibility of witnesses, and second-guessing the County's decision. CTED's praise of the Board's conduct reflects a desire to return to the pre-1997 days where the Board did not defer to a County's land use choice. Under Quadrant and Lewis County, that is no longer the law. The Court applied the proper standard of review. Respondents have failed to meet any of the standards of RAP 13.4(b).

3. The GMA's Directive to Protect Productive Agricultural Lands Only Applies to Land that Meets the GMA Definition in RCW 36.70A.030(2).

CTED, Futurewise and the District all argue that because this case involves the re-designation of agricultural lands, it presents an issue of

[38] CTED Petition at 14.

substantial public interest warranting review under RAP 13.4(b)(4).[39] Although the designation of agricultural lands under the GMA is important, this case involves a site-specific designation of 110 acres. Compared to the public policy considerations in selecting the county-wide designation have criteria and subsequent designation of 54,400 acres as agricultural lands in Lewis County, this case does not present an issue of substantial public interest.

Lewis County clarifies, in no uncertain terms, that a county's obligation to designate and protect agricultural lands under RCW 36.70A.060 and .170 applies only to lands that meet the GMA definition of "agricultural land" in RCW 36.70A.030(2).[40] The Respondents here erroneously attempt to impose on a county re-designating land from an agricultural resource category a higher burden than simply showing that the land no longer meets both prongs of the GMA definition. However, in City of Redmond v. CPSGMHB, 116 Wn.App. 48, 65 P.3d 337 (2003) (Redmond II), the Court of Appeals held that the GMA did not impose a heightened level of scrutiny when a growth board reviews a local decision de-designating agricultural lands. 116 Wn.App. at 56-58.

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[39] Although the District argues that the Court's decision was in conflict with another Court of Appeals decision warranting review under RAP 13.4(b)(2), it fails to cite any cases in that section of its Petition proving that such is the case. District Petition at 6-7.
[40] 157 Wn.2d at 499-500.

Further, both the District and Futurewise argue that a county's action that results in any loss of agricultural land warrants review by this Court.[41] The District asserts that the de-designation of agricultural lands should be "extraordinarily difficult,"[42] that any growth board decision allowing the de-designation of agricultural lands effectively repeals the GMA because such county action is "free of effective review,"[43] and will unfairly benefit wealthy businesses at the expense of vital agricultural land preservation . . . ."[44] Neither the District nor Futurewise cites any case holding such an extreme view, let alone shows that Lewis County supports, much less mandates, such an outcome.

Futurewise emphasizes the GMA mandate to conserve productive agricultural land,[45] but ignores that this mandate does not trump two other important GMA provisions: (1) the land must meet the GMA definition of "agricultural land," and (2) a growth board must defer to a county land use decision (under RCW 36.70A.3201) unless that decision is clearly erroneous in light of the record as a whole.[46] Futurewise pays lip service to the GMA requirement that lands must have "long term commercial significance" for agricultural production in order to be designated as

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[41] District Petition at 4-7; Futurewise Petition at 17.
[42] District Petition at 11.
[43] District Petition at 6.
[44] District Petition at 14. The District's claim to be a "vulnerable litigant" (Petition at 12) is difficult to take seriously when CTED, a branch of the State of Washington, is on its side.
[45] Futurewise Petition at 8-9.
[46] RCW 36.70A.320(3).

agricultural lands,[47] but then accuses the County of considering only the Winters testimony and the Higa-Burkholder report, and "dismissing the rest of the record."[48]

It is apparent from Respondents' Petitions that not one of the Respondents wants the Board to apply the deferential standard of review that Lewis County requires. All three Respondents tacitly urge that Lewis County be overruled, and that the Board be allowed to weigh the evidence[49] under a *de novo* standard of review or the pre-1997 preponderance of the evidence standard. The District asks that any de-designation of agricultural lands be subject to heightened scrutiny, exactly what the Court of Appeals rejected in Redmond II. Under Lewis County, decided less than a year ago, the proper test is a deferential, clearly erroneous standard. Rather than committing error, the Court of Appeals properly applied that test here. There is no reason to revisit that issue in this case. Respondents have failed to satisfy the grounds for review under RAP 13.4(b)(1), (2) or (4).

D. The Court Properly Found that *Res Judicata* Does Not Bar the County's Re-Designation of the Lands.

Although the District asserts that the Court's ruling on the *res judicata* issue warrants review under RAP 13.4(b)(1)(2) and (4) (District Petition at 8-10), it fails to link its argument to the standards in that Court

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[47] Petition at 13.
[48] Id. at 14.
[49] Futurewise characterizes the issue as focusing on the "weight of the record evidence." (Petition at 2, Issue 1)

rule. The District's Petition should be denied on that basis alone. Nonetheless, the County will respond to the District's argument.

As it did before the Court of Appeals, the District contends that *res judicata* bars the County from re-designating the Island Crossing property from an agricultural designation.[50] The Court discussed and rejected the District's arguments.[51] Of particular importance, the Court pointed out that the trial court (and similarly, the District) misstated the issue. The issue before the Board under RCW 36.70A.320(3) was whether the County's latest action was clearly erroneous in light of the record as it was in 2003 and 2004, not whether the County's land use decision for the same property in the 1990s was correct.[52] The District's argument that the prior Court of Appeals ruling in 2001 prevented the County from re-designating the land in this case[53] fails to address or respond to the Court of Appeals decision or analysis.

The District argues that the ruling in the earlier case that the land was properly designated as agricultural proves that "there was no substantial evidence to support" a different designation in this case.[54] That argument ignores both the discretion counties have to make different land use choices

[50] Significantly, CTED fails to join in the District's "res judicata" argument. CTED Petition at 5 (footnote 2). This is undoubtedly because here the County followed the GMA procedures exactly as written, for which CTED is to provide technical assistance. RCW 36.70A.190.
[51] Slip Op. at 21-25.
[52] Slip Op. at 23-24.
[53] District Petition at 9-10.
[54] Id. at 10.

over time under RCW 36.70A.3201, and the fact that the GMA allows citizens to propose amendments to plans or regulations on a regular basis.

Under the GMA, the Legislature has built in a mandatory review process whereby property owners and other interested stakeholders may propose amendments to the comprehensive plan and development regulations.[55] In 2003, the County reviewed the Lane proposal under a new record (including the Higa-Burkholder report), different from what existed in the proceedings in the late 1990s. Not only did the County Council make a different decision than it did in the 1990s, that decision was based on a different record from that which existed in the earlier proceedings.

As the Court correctly noted, the issue in this case is not the correctness of the County's 1998 designation of the land as agriculture; it is whether the new designation as urban commercial is clearly erroneous.[56] The County was well within its rights to make a different decision this time under that new record.[57] The Court's decision that *res judicata* does not bar the County from making a different decision under those circumstances was correct, and does not merit review by this Court.

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[55] RCW 36.70A.470(2).
[56] Slip Op. at 24-25.
[57] Slip Op. at 23-25.

E. The Court of Appeals Correctly Ruled that the County Need Not Show a Change in Circumstances in Order to De-Designate Agricultural Land.

As with the *res judicata* issue, the District claims that the Court's failure to require the County to show changed circumstances warrants review under RAP 13.4(b)(1), (2) and (4), but it fails to link its arguments to the standards in that court rule. The District's petition should be denied on that basis alone. Nonetheless, the District is wrong on all claims.

The Court of Appeals correctly recognized that under the GMA, a county need not prove that there has been a change in circumstances in order to de-designate agricultural lands.[58] The District argues that this is the wrong standard of review, claiming that because this case involves a rezoning of property, changed circumstances is the proper standard.[59] The District misreads the law.

This case involves both a comprehensive plan amendment and an implementing rezone. Under those circumstances the "changed circumstances" test does not apply. Review of a county's action which jointly amends a comprehensive plan and a zoning map is through the growth board under the GMA's "clearly erroneous" standard in RCW 36.70A.320(3).[60] Even where a rezone is adopted independently of an

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[58] Slip Op. at 25.
[59] District Petition at 10-12.
[60] The McNaughton Group v. Snohomish County, CPSGMHB No. 06-3-0027, Order on Motions (October 30, 2006) at 6-7.

accompanying comprehensive plan amendment, no showing of changed circumstances is required where, as here, the rezone implements, and is consistent with, the plan.[61] The District has failed to cite to any Court of Appeals decision under analogous facts that are presented here (a rezone accompanied by a concurrent comprehensive plan amendment, reviewed by a growth board) where a reviewing court applied the changed circumstances test.

III. CONCLUSION

The Respondents have failed to meet any of the standards for this Court to accept review under RAP 13.4. This Court should deny the Respondents' Petitions for Review.

DATED this 24th day of July, 2007.

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FILED AS ATTACHMENT
TO E-MAIL

[61] Henderson v. Kittitas County, 124 Wn.App. 747, 755-56, 100 P.3d 842 (2004); SORE v. Snohomish County, 99 Wn.2d 363, 370-71, 662 P.2d 816 (1983).